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HOUSE BILL 480

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Body Art Safe Practices Act".

Section 2. DEFINITIONS.--As used in the Body Art Safe
Practices Act:

A. "body art" means tattooing, body piercing or
scarification but does not include practices that are
considered medical procedures by the New Mexico board of
medical examiners;

B. "body art establishment" means a fixed or mobile
place where body art is administered on the premises;

C. "body piercing" means to cut, stab or penetrate

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1 the skin to create a permanent hole or opening;

2 D. "contaminated waste" means a liquid or
3 semiliquid blood or other potentially infectious materials;
4 contaminated items that would release blood or other
5 potentially infectious materials in a liquid or semiliquid
6 state if compressed; items that are caked with dried blood or
7 other potentially infectious materials and are capable of
8 releasing these materials during handling; and contaminated
9 sharps and pathological and microbiological wastes containing
10 blood and other potentially infectious materials;

11 E. "department" means the department of health;

12 F. "disinfection" means the killing of
13 microorganisms, but not necessarily their spores, on inanimate
14 objects;

15 G. "employee" means a person employed in a body art
16 establishment who administers body piercing, tattooing or
17 scarification;

18 H. "equipment" means machinery used in connection
19 with the operation of a body art establishment, including
20 fixtures, containers, vessels, tools, devices, implements,
21 furniture, display and storage areas, sinks and other
22 apparatuses and appurtenances;

23 I. "handsink" means a lavatory equipped with hot
24 and cold running water under pressure, used solely for washing
25 hands, arms or other portions of the body;

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1 J. "instruments used for body art" means hand
2 pieces, needles, needle bars and other items that may come into
3 contact with a person's body during the administration of body
4 art;

5 K. "invasive" means entry into the body either by
6 incision or insertion of an instrument into or through the skin
7 or mucosa or by other means intended to compromise the skin or
8 mucosa;

9 L. "operator" means the owner or his agent in
10 charge of a body art establishment;

11 M. "procedure surface" means any surface that
12 contacts the client's unclothed body during a body art
13 procedure or any associated work area that may require
14 sanitizing;

15 N. "scarification" means cutting into the skin with
16 a sharp instrument or branding the skin with a heated
17 instrument to produce a permanent mark or design on the skin;

18 O. "sharps" means any sterilized object that is
19 used for the purpose of penetrating the skin or mucosa,
20 including needles, scalpel blades and razor blades;

21 P. "sharps container" means a puncture-resistant,
22 leak-proof container that can be closed for handling, storage,
23 transportation and disposal and is labeled with the
24 international "biohazard" symbol;

25 Q. "single use" means products or items that are

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1 intended for one-time, one-person use and are disposed of after
2 use on each client, including cotton swabs or balls, tissues or
3 paper products, paper or plastic cups, gauze and sanitary
4 coverings, razors, piercing needles, scalpel blades, stencils,
5 ink cups and protective gloves;

6 R. "sterilization" means destruction of all forms
7 of microbiotic life, including spores; and

8 S. "tattooing" means the practice of depositing
9 pigment into the epidermis using needles, which is either
10 permanent, semi permanent or temporary, by someone other than a
11 state-licensed physician or a person under the supervision of a
12 state-licensed physician and includes permanent cosmetics,
13 dermatography, micropigmentation, permanent color technology and
14 micropigment implantation.

15 Section 3. LICENSE--APPLICATION--REVOCATION--
16 SUSPENSION.--

17 A. A person shall not operate a body art
18 establishment unless he possesses a valid and unsuspended
19 license issued by the department in accordance with the Body
20 Art Safe Practices Act and the rules promulgated pursuant to
21 that act. The license shall be posted in a conspicuous place
22 within the body art establishment. A person shall not display
23 a license unless it has been issued to him by the department
24 and has not been suspended or revoked.

25 B. A person desiring to operate a body art

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1 establishment shall apply to the department for the issuance of
2 a license. Applications shall be made in the form and in
3 accordance with procedures established by the rules of the
4 department. The department shall issue a license to an
5 applicant that complies with the rules of the department
6 covering the issuance of licenses and who demonstrates to the
7 satisfaction of the department his ability to comply with all
8 the provisions of the Body Art Safe Practices Act. The body
9 art establishment shall renew the license annually. The
10 department shall set license fees and license renewal fees in
11 amounts necessary to administer the provisions of the Body Art
12 Safe Practices Act.

13 C. The department shall promulgate rules for the
14 revocation or suspension of licenses for those body art
15 establishments that fail to comply with a provision of the Body
16 Art Safe Practices Act. A license shall not be suspended or
17 revoked pursuant to the Body Art Safe Practices Act without
18 providing the operator of a body art establishment an
19 opportunity for an administrative hearing. The hearing officer
20 shall not be a person previously involved in the suspension or
21 revocation action. An inspection made more than twenty-four
22 months prior to the most recent inspection shall not be used as
23 a basis for suspension or revocation.

24 D. Within ninety days of the receipt of a license,
25 the body art operator and his employees shall provide proof of

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1 attendance at a blood-borne pathogen training program approved
2 by the department. Subsequently, the body art operator and his
3 employees shall attend a blood-borne pathogen training program
4 at least once every three years.

5 E. A current body art establishment license shall
6 not be transferable from one person to another.

7 F. Body art establishments engaged in the body art
8 business before the effective date of the Body Art Safe
9 Practices Act shall have ninety days from the effective date of
10 that act to comply with the license requirements.

11 G. The following information shall be kept on file
12 on the premises of a body art establishment and available for
13 inspection by the department:

14 (1) the full names of all employees in the
15 establishment and their exact duties;

16 (2) the following information pertaining to
17 all employees:

18 (a) date of birth;

19 (b) gender;

20 (c) home address; and

21 (d) phone number;

22 (3) identification photographs of all
23 employees;

24 (4) the body art establishment name and hours
25 of operation;

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- 1 (5) the name and address of the body art
- 2 establishment owner;
- 3 (6) a complete description of all body art
- 4 performed;
- 5 (7) a list of all instruments, body jewelry,
- 6 sharps and inks used, including names of manufacturers and
- 7 serial or lot numbers or invoices or their documentation
- 8 sufficient to identify and locate the manufacturer; and
- 9 (8) a copy of the Body Art Safe Practices Act.

10 H. A holder of a license to operate a body art

11 establishment who intends to change the location of the

12 establishment shall notify the department in writing of that

13 intent not less than thirty days before the change is to occur.

14 The notice shall include the street address of the new

15 location.

16 Section 4. INSPECTION BY DEPARTMENT. --

17 A. The department shall annually inspect body art

18 establishments to determine compliance or lack of compliance

19 with the Body Art Safe Practices Act. The procedures for

20 inspection shall be in accordance with the rules of the

21 department. Upon request by the department to a body art

22 establishment operator or to his employee or agent in charge of

23 the body art establishment premises, he shall allow the

24 department official, upon proper identification, to enter the

25 premises, inspect all parts of the premises and inspect and

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1 copy records of the body art establishment. The operator, his
2 employee or agent in charge of the body art establishment
3 premises shall be given an opportunity to accompany the
4 department official on his inspection and to receive a report
5 of the inspection within fourteen days after the inspection.
6 Refusal to allow an inspection is grounds for suspension or
7 revocation of the license of the operator, provided that the
8 department official tendered proper identification prior to the
9 refusal.

10 B. During an inspection the department may take
11 samples of equipment and supplies on the premises for the
12 purpose of determining compliance with the provisions of the
13 Body Art Safe Practices Act. The department shall return any
14 samples of equipment or supplies after the investigation is
15 complete.

16 C. A person who pierces only the outer perimeter
17 and lobe of the ear using a pre-sterilized encapsulated single
18 use stud ear piercing system, implementing appropriate
19 procedures, is exempt from the requirements of the Body Art
20 Safe Practices Act. A person who uses those ear piercing
21 systems shall conform to the manufacturer's directions on use
22 and applicable United States food and drug administration
23 requirements. All ear piercers shall employ handwashing or use
24 of an antibacterial gel and wear disposable medical gloves,
25 which are to be discarded after use for each customer. The

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1 department may investigate consumer complaints relating to
2 alleged misuse or improper procedures involving ear piercing
3 systems.

4 Section 5. REQUIREMENTS FOR SINGLE USE ITEMS. --

5 A. All sharps shall be sterilized prior to use and
6 stored in paper peel-packs.

7 B. Single use items shall not be used on more than
8 one client for any reason. After use, all single use needles,
9 razors and other sharps shall be immediately disposed in
10 approved sharps containers. Piercing needles are strictly
11 single use.

12 C. All body art stencils shall be single use and
13 disposable. Petroleum jellies, soaps and other products used
14 in the application of stencils shall be dispensed and applied
15 on the area to be tattooed with sterile gauze or in a manner
16 that prevents contamination of the original container and its
17 contents. The gauze shall be used only once and then
18 discarded.

19 Section 6. SANITATION AND STERILIZATION. --

20 A. Nondisposable instruments used to administer
21 body art shall be cleaned thoroughly after each use by
22 scrubbing with an antimicrobial soap solution and hot water or
23 an appropriate disinfectant to remove blood and tissue residue
24 and placed in an ultrasonic unit, which shall remain on the
25 premises of the body art establishment and which shall be

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1 operated in accordance with the manufacturer's instructions.

2 B. After cleaning, all non-disposable instruments
3 used to administer body art shall be packed individually in
4 paper peel-packs and sterilized. All paper peel-packs shall
5 contain either a sterilizer indicator or internal-temperature
6 indicator. Properly packaged, sterilized and stored equipment
7 shall be stored no more than one year. Paper peel-packs shall
8 be dated with an expiration date not to exceed one year.
9 Sterile equipment may not be used after the expiration date
10 without first repackaging and reesterilization.

11 C. All nondisposable instruments used for body art
12 shall be sterilized in an autoclave at the body art
13 establishment. Off-site sterilization is prohibited. The
14 sterilizer shall be used, cleaned and maintained according to
15 the manufacturer's instructions. A copy of the manufacturer's
16 recommended procedures for the operation of the sterilization
17 unit shall be available for inspection by the department.

18 D. A holder of a license to operate a body art
19 establishment shall demonstrate that the sterilizer used is
20 capable of attaining sterilization by monthly spore destruction
21 tests. Those tests shall be verified through an independent
22 laboratory. A license shall not be issued or renewed until
23 documentation of the sterilizer's ability to destroy spores is
24 received by the department. Those test records shall be
25 retained by the operator for a period of three years and

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1 provided to the department upon request.

2 E. After sterilization, the instrument used for
3 body art shall be stored in a dry, clean cabinet or other
4 tightly covered container reserved for the storage of
5 instruments.

6 F. Instruments used for body art shall remain
7 stored in sterile packages until just prior to performing a
8 body art procedure. When assembling instruments used for
9 performing body art, the employee shall wear disposable medical
10 gloves and use techniques to ensure that the instruments and
11 gloves are not contaminated.

12 G. Inks, dyes, pigments and sharps shall be
13 specifically manufactured for performing body art procedures
14 and shall not be adulterated. Immediately before applying a
15 tattoo, the quantity of the dye to be used for the tattoo shall
16 be transferred from the bottle and placed into sterile, single
17 use paper cups or plastic caps. Upon completion of the tattoo,
18 those single use cups or caps and their contents shall be
19 discarded.

20 Section 7. IMMEDIATE SUSPENSION.--The department may
21 suspend a license immediately without prior notice to the
22 holder of the license if it determines, after inspection, that
23 conditions within a body art establishment present a
24 substantial danger of illness, serious physical harm or death
25 to customers who might patronize a body art establishment. A

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1 suspension action taken pursuant to this section is effective
2 when communicated to the operator or an employee or agent of
3 the operator who is in charge of the premises involved. If
4 there is no designated employee or agent in charge of the
5 premises, communication to an employee physically present on
6 the premises is sufficient communication to make the suspension
7 effective. Suspension action taken pursuant to this section
8 shall not continue beyond the time that the conditions causing
9 the suspension cease to exist, as determined by a department
10 inspection at the request of the operator.

11 Section 8. JUDICIAL REVIEW. --A person to whom the
12 department denies a license or whose license is suspended or
13 revoked by the agency may appeal pursuant to Section 39-3-1.1
14 NMSA 1978.

15 Section 9. ENFORCEMENT. --

16 A. The department may seek relief in district court
17 to enjoin the operation of a body art establishment not
18 complying with the Body Art Safe Practices Act.

19 B. The district court may impose a civil penalty
20 not exceeding five hundred dollars (\$500) on a person who
21 violates a provision of the Body Art Safe Practices Act. Each
22 violation of the provisions of the Body Art Safe Practices Act
23 constitutes a separate offense.

24 Section 10. DISEASE CONTROL. --A skin or mucosa surface to
25 receive a body art procedure shall be free of rash, infection
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1 or any other visible active pathological condition. The skin
2 of the employee shall be free of rash, infection or any other
3 visible pathological condition. An employee affected with
4 boils, infected wounds, open sores, abrasions, exudative
5 lesions, acute respiratory infection, nausea, vomiting or
6 diarrhea shall not work in any area of a body art establishment
7 in any capacity in which there is a likelihood of contaminating
8 body art equipment, supplies or working surfaces with
9 pathogenic organisms.

10 Section 11. RECORDS RETENTION. --The body art
11 establishment shall keep a record of all persons who have had
12 body art procedures performed. The record shall include the
13 name, date of birth and address of the client; the date of the
14 procedure; the name of the employee who performed the
15 procedure; the type of procedure performed and its location on
16 the client's body; the signature of the client; and if the
17 client is a minor, written proof of parental or guardian
18 presence and consent.

19 Section 12. BODY ART SAFE PRACTICES FUND. --The "body art
20 safe practices fund" is created in the state treasury. All
21 license fees, charges and fines imposed by the department shall
22 be deposited in the fund. Money in the fund is appropriated to
23 the department for the purpose of carrying out the provisions
24 of the Body Art Safe Practices Act. Any unexpended or
25 unencumbered balance remaining at the end of a fiscal year

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1 shall not revert to the general fund.

2 Section 13. PARENTAL CONSENT. --A body art establishment
3 shall require that all of its customers present proof that they
4 are eighteen years of age or older prior to administering body
5 art. If a customer is under eighteen years of age, the body
6 art establishment shall require a notarized informed consent
7 form from and the presence of his parent or legal guardian
8 before administering body art. The parent or legal guardian
9 shall personally deliver the notarized informed consent and
10 remain present throughout the administration of the body art.
11 Delivery by the person who is under eighteen years of age or
12 younger is not sufficient to permit the administration of body
13 art. Photographic identification of the parent or legal
14 guardian is required.

15 Section 14. MUNICIPALITIES. --The Body Art Safe Practices
16 Act provides minimum standards for safe body art practices. A
17 municipality may by ordinance provide more stringent standards.

18 Section 15. RULES. --The department shall promulgate rules
19 necessary to implement the provisions of the Body Art Safe
20 Practices Act.